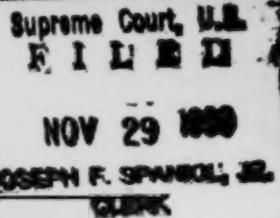


90-915

No. 90-



IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1990

JULIAN I. RICHARDS, an individual,
Petitioner,

vs.

SUBURBAN TRUST COMPANY,
Successor Personal Representative of
the Estate of Edith A. Parsons, Deceased,
and

David B. Nicholson,
Former Personal Representative of
the Estate of Elizabeth Ann Richards,
Deceased,

and

Mark Allen Richards,
Successor Personal Representative of
the Estate of Elizabeth Ann Richards,
Deceased,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

Julian I. Richards
109 Bay Colony Drive (47th St.)
P. O. Box 846
Virginia Beach, VA 23451
(804) 425-7699 / (202) 797-7416
Petitioner, pro se



QUESTIONS PRESENTED

1. In the administration of the estates of Edith A. Parsons and Elizabeth Ann Richards were the orders, made pursuant to Title 12-203 of the Courts and Judicial Proceedings Article of the Code of Maryland, and issued by the Court of Appeals of Maryland in denying your petitioner's Petitions for Writs of Certiorari, based on adequate and independent state grounds barring this Court's jurisdiction?
2. Should it, in effect, be declared to be the supreme law of the land that the administration of a decedent's estate, no matter how many state or other jurisdictions it takes place in, is but one proceeding involving both legalities and equities; with its creditors, debtors, beneficiaries and fiduciaries in the "ancillary"

jurisdictions obliged to cooperate with, and entitled to the guidance, assistance and protection of the domiciliary Personal Representative; and that that one proceeding must, ultimately, be under the control of the appropriate domiciliary court?

3. In the domiciliary administration of the estate of his Aunt, Edith A. Parsons, was petitioner denied his Fourteenth Amendment rights not to be deprived of liberty or property without due process of law and his right to the equal protection of the laws, in the proceedings leading up to the hearing on his removal as Executor of that estate, the hearing itself, and the proceedings that followed pertaining thereto?
4. Did any act, failure to act or acquiescence by any of the participants in the Maryland

domiciliary administration of the estate of Edith A. Parsons, including the Courts and their officers, clerks and agents, take place amounting to a valid completion of the subverting judicial sale of real estate undertaken in the District of Columbia conservatorship of her estate? And, if not, did the supposed sale, or, the supposedly necessary and valid conveyance of the same real estate asset, after Mrs. Parson's death, in the D.C. ancillary administration violate petitioner's Fifth Amendment right not to be deprived of property without due process of law; or, violate petitioner's Fourteenth Amendment right (insofar as the Maryland Courts were involved) not to be deprived of property without due process of law?

5. Has the paper-writing purporting to be the last will and testament of petitioner's sister, Elizabeth Ann Richards, been completely adjudicated upon by a proper probate procedure establishing it as valid and effecting an equitably distributed, complete disposition of the estate in keeping with petitioner's Fourteenth Amendment rights to due process and equal protection?; or are Sections 2-105 (Plenary Proceeding), 5-207 (Caveat Proceeding) and 6-307 (Request for Judicial Probate) of the Estates and Trusts Article of the Maryland Code, as interpreted, lacking in explicitiveness, vague, contradictorily ambiguous, or lacking in specificity to such an extent, or defective in structure in any other way such that they have wrought, as applied in this case, a denial to

petitioner of his right to due process and/or equal protection of the laws under the Fourteenth Amendment?

6. In the matter of the administration of the Estate of Elizabeth Ann Richards is not the Maryland "Issues from the Orphans' Court" civil action, arising from a caveat to decedent's will, a "suit at common law" within the meaning of the Seventh Amendment and does not the Maryland will caveat proceeding, of ancient lineage [see Kao v. Hsia, 309 Md. 366 (1987)], possess, as a basic inherent characteristic, and integral part thereof, a fundamental Fourteenth Amendment "liberty", deeply rooted in this nation's history and tradition, or a Ninth Amendment right, natural or otherwise, not to be denied or

disparaged but rather to be recognized, fostered and nourished by our court systems--that being the fundamental right to bring, develop and have tried legal actions, at Law and Equity, with decisions on their merits, permitting this court to decide whether the Summary Judgment rendered by the Circuit Court for Montgomery County, Maryland, in Civil Action 3311, violates petitioner's Seventh Amendment jury trial rights including a right to confront, at least by discovery procedures, witnesses and opposing litigants; and/or his Fourteenth Amendment right not to be deprived of liberty or property without due process of law?

7. In considering the Parsons estate and the administration of the Estate of Elizabeth Ann Richards in particular, entirely apart from the approach

presented in the preceding question six, is this court's exposition of the law in Perris v. Higley, 87 U.S. 375 (1874), with regard to Orphan's Courts, that "Such Courts are not in their mode or proceeding governed by the rules of the common law. They are without juries and have no special system of pleading.", going to be allowed to stand with such broad affect and effect except where changed by state statute, permitting Orphan's Courts throughout the nation to conduct estate administrations as was done in petitioner's cases--with unexplained authority exercised without notice, egregiously erroneous use of the common law doctrine of Res Judicata, all but immune from judicial review, and with impunity insofar as accountability is concerned?

8. Has petitioner's Fourteenth Amendment right not to "... be deprived of ... property, without due process of law" been violated by the award by the trial court of a Judgment under Md. Rule 1-341 for sanctions against him in the amount of \$11,053.55 plus interest?
9. If the court finds, in its consideration of Question 5, that the paper-writing which petitioner contends is not the last will and testament of his sister, Elizabeth Ann Richards, has yet to be adjudicated as valid or invalid, can petitioner, having been denied discovery since the 1985 summary judgment, obtain a fair, conclusive determination of the invalidity issue, especially when, because of the recent merger of law and equity

in Maryland, it is uncertain how this question can most fairly be ~~solved~~ solved?

10. Do the interests of justice require that jurisdictions, wanting to retain the Will Caveat as an often useful proceeding (distinct from a common law action to contest a will), be required to recognize and affirm that both caveator(s) and caveatee(s) can insist as their entitlement therein, that confrontation in open court with the right to cross-examination be had because such features are uniquely inherent in this ancient proceeding?

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OFFICIAL AND UNOFFICIAL REPORTS
OF OPINIONS IN THE CASE

EDITH PARSONS ESTATE:

The administration of the Estate of Edith A. Parsons began in the U. S. District Court for the District of Columbia as a property conservatorship initiated by your petitioner pursuant to Section 21-1501 of the D.C. Code. It was Civil Action 1600-71 and was transferred with the same number to the civil division of the D.C. Superior court when the courts were restructured.

The domiciliary administration of the estate began, following Mrs. Parsons' death on February 19, 1973, in the Orphan's Court for Montgomery County, Maryland, as No. 0170573J. Ancillary administrations thereof took place in Virginia and the District of Columbia. The Virginia administration, Court Papers No. 1624, was closed by an Order, dated

August 10, 1977, of the Circuit Court of the City of Virginia Beach, in Chancery No. 78-807, an action to falsify and surcharge the ancillary accountings. The District of Columbia ancillary administration of the decedent's estate took place in the Probate Division of the Superior Court of the District of Columbia, as Administration No. 1062-73.

Courts of record cases arose in the Maryland domiciliary administration of Edith A. Parsons estate:

1. No. 1077, Sept. Term, 1974, Court of Special Appeals, Maryland, 27 Md App 1. Affirmed petitioner's removal as estate executor by the Orphan's Court for Montgomery County, Maryland. Petitioner received no notice from the courts of the decision nor did his attorney inform him of it in time for him to make an appeal and the Court of Appeals denied his Motion for a waiver of the appeal

deadline and refused leave for him to petition for a writ of certiorari.

2. No. 1378, September Term, 1977,
Court of Special Appeals of Maryland, Per Curiam opinion dated July 11, 1978 which dismissed petitioner's appeal from the Orphan's Court Order dated November 17, 1977 approving the third and final accounting of the Suburban Trust Co., Successor Personal Representative of the Estate of Edith A. Parsons (unreported). Petitioner had no notice of the submission of that approval order to the Orphan's Court and no opportunity to take exception to its contents or propriety.

3. The Judgment Order of the Court of Appeals of Maryland on which the instant petition to this court is based was made in Petition Docket No. 288, September Term, 1978. It was dated September 22, 1978 and made pursuant to Section 12-203 of the Courts and Judicial

Procedures Article of the Maryland Code. The petition denied sought review of the decision of the Court of Special Appeals of Maryland in No. 1378, supra.

In the District of Columbia, other cases concerning the conservatorship of the Edith A. Parsons' estate and its D.C. ancillary administration as a decedent's estate, were the subject of four previously docketed petitions to this court: No. 74-1501, an appeal, was treated as a petition for certiorari and dismissed; as were 75-1573, 83-745, and 83-746, all petitions for certiorari. 83-745 sought a writ to the U.S. Cir. Ct. of Appeals for the District of Columbia for review of Cloud on title Action No. C.A. 82-1854 in the U.S. Dist. Ct. for the D. of C. as affirmed by the Appeals Court in No. 82-2317; 83-746 sought a writ to the D. of C. Ct. of Appeals for review of Cloud on title C.A. 8771-82 in

the D.C. Superior Ct. as summarily affirmed in No. 83-208 by the appeals court; as well as review of Appeals No. 7831, 8406 and 9672 all in the D. of C. Ct. of Appeals also relating to the erroneous Judicial sale.

ELIZABETH ANN RICHARDS ESTATE:

Petitioner's sister, Elizabeth Ann Richards, a/k/a Elizabeth A. Richards, died on December 19, 1983. A paper writing purporting to be her last will and testament was offered for probate by her attorney, David B. Nicholson on January 4, 1984 and he was granted letters testamentary as her personal representative by an "Administrative Probate" order entered into the Administrative Proceedings Record of the office of the Register of Wills for Montgomery County, Maryland that same date in Case No. 00801-84.

Petitioner's verified petition to caveat was filed and entered on July 2, 1984. A consent order was stipulated to by your petitioner's attorney representing him a caveator and by attorneys for caveatee David B. Nicholson and "Issues From The Orphan's Court" were framed in accordance with statutory requirements and was transferred on December 7, 1984 to the civil action docket of the Circuit Court for Montgomery County, Maryland, as Civil Action 3311 for trial as a lawsuit at common law.

Significant courts of record cases which arose in the only administration of the Estate of Elizabeth Ann Richards--the Md. domiciliary adm. No. 008-01-84 in the Orphan's Court For Montgomery County, Md. are:

- 1) Circuit Court For Montgomery Co.,
Md., Civil Action 3311. This trial court

case on Issues From the Orphan's Court was decided by Summary Judgment on September 6, 1985. The order was entered on September 11, 1985.

2) Court of Special Appeals of Md., No. 1293, September Term 1985. Judgment by three-judge panel entered on June 17, 1986 affirming with dissenting opinion the trial courts' Summary Judgment of September 11, 1985 in Civil Action 3311, supra.

3) Court of Appeals of Maryland, No. 90 September Term, 1986. A Per Curiam Order entered January 8 1987, which under Md. Rule 876 ". . . shall be evidenced by the mandate. . . ." The mandate remanded the cause to the Court of Special Appeals for further proceedings on the merits which were not held.

4) Court of Appeals of Maryland, Petition Docket No. 395, Sept. Term, 1987 (P.H.C. No. 306, Sept. Term 1987 Court of

Special Appeals), denied, pursuant to Section 12-203 of The Courts and Judicial Proceedings Article of the Md. Code, certiorari to review what should have been the "further proceedings" by the Court of Special Appeals regarding the aggrieving summary judgment but was instead a dismissal of the appeal seeking those further proceedings. Please take judicial notice that your Petitioner thereupon sought a writ from this Honorable Court in Petition Docket No. 87-1771, Sept. Term 1987 which was denied most probably because it appeared that in Maryland his administrative remedies had not been exhausted.

5) Court of Appeals of Maryland, Petition Docket No. 126, Sept. Term, 1988 (No. 1086 Sept. Term 1988 C.S.A.) (Appeals from the Orphan's Court For Montgomery County, Md., closing orders in Adm. No. 008-01-84), Appeal from the

Circuit Court For Montgomery County, Md.
decisions in Civil Action 3311.

The Court of Appeals denied P.D.N. 126 as to the Court of Special Appeals, on July 21, 1989 by use of a Section 12-203 C. & J.P. Order on the grounds that ". . . there has been no showing that review by Certiorari is desirable and in the public interest." And on August 1, 1990, in response to your Petitioner's Motion seeking further consideration of the Petition as to the Orphan's Court and the Law Court which tried the caveat "Issues", made the denial order on which this instant Petition is predicated.

JURISDICTION - Rule 14(e)

In general, the jurisdiction to review is conferred on this court, under Article III, Section (2) of the Constitution, as a result of the authority created by Title 28 United States Code

annotated 1257 (3) wherein it is stated, verbatim, at page 144, that:

Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows: . . .

(3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. (June 25, 1948, c646, 62 Stat.929.)

In the event the court declares or chooses to treat the administrations of the estate of Edith A. Parsons as one proceeding and decides the requirements for complete, fair and equitable adjudication of the issues therein include a review of the District of

Columbia cases bearing on that administration, then the court's jurisdiction is conferred, by the District of Columbia Court Reform and Criminal Procedure Act of 1970, Section 142(5) (A), 84 Stat. 552 as set forth in Sections 11-101 and 11-102 of the District of Columbia code which is found on pages 795 and 796 of the 1973 Edition. They read, verbatim, as follows:

Section 11-101

The Judicial Power in the District of Columbia is vested in the following courts:

(1) The following Federal Courts established pursuant to Article III of the Constitution:

(A) The Supreme Court of the United States.

(B) The United States Court of Appeals for the District of Columbia circuit.

(C) The United States District Court for the District of Columbia.

(2) The following District of Columbia courts established pursuant to Article I of the Constitution:

(A) The District of Columbia Court of Appeals.

(B) The Superior Court of the District of Columbia. (July 29, 1979, Pub. L. 91-358 Section III, Title I, 84 Stat. 475).

Section 11-102

The highest court of the District of Columbia is the District of Columbia Court of Appeals. Final judgments and decrees of the District of Columbia Court of Appeals are reviewable by the Supreme Court of the United States in accordance with Section 1257 of Title 28, United States Code. (July 29, 1970, Pub. L. 91-358, Section III, Title I 84 Stat. 475).

In reference to the District of Columbia Court of Appeals, the jurisdictional authority is interpreted in the landmark case, Pernell v Southall Realty, 416 U.S. 363, 40 L.ed 198, 94 S.

Ct. 1723 (1974), wherein Justice Marshall, delivering the court's opinion, made the following statement:

"The 1970 Act made fundamental changes in this structure. The District of Columbia Court of Appeals was made the highest court of the District, 'similar to a state Supreme Court,' and its judgments made reviewable by this Court in the same manner that we review judgments of the highest Courts of the several States."

GROUND FOR INVOCATION OF JURISDICTION

FINALITY AND TIMELINESS
ESTATE OF EDITH A. PARSONS:

The judgment sought to be reviewed was entered by the Court of Appeals of Maryland on September 22, 1978 in Petition Docket No. 288, September Term, 1978 over the signature of Chief Judge Robert C. Murphy, pursuant to Section 12-203 of the Courts and Judicial Proceedings Article of the Maryland Code. Both ancillary administrations, in D. C. and Virginia, had been previously closed.

1

There being no provision for a rehearing of a denial of a Petition for a Writ of Certiorari in the Maryland Rules of Procedure, that denial order stating that, ". . . there has been no showing that review by certiorari is desirable and in the public interest" is a final judgment or decree of the highest court of the state in which a decision could be had within the meaning of Title 28-1257 (3) US Code. Entry of said order closed the administration of the estate of Edith A. Parsons and extinguished all avenues to remedy except the one being sought by this petition.

The instant petition for review of that judgment order is timely because, when on February 19, 1979, petitioner sought to docket his earlier petition pursuant to Chief Justice Burger's order dated November 21, 1978, extending the filing deadline to February 19, 1979, its

docketing was refused. It was, however, verbally explained to your petitioner at that time by then Deputy Clerk Lawrence P. Gill that the court's unwritten policy dictated that no petition be docketed which sought writs to court's of more than one state or federal jurisdiction at a time. Whereupon, Mr. Gill assured your petitioner that under the Rules of the Court then in effect there was no deadline whatsoever on the curing of that defect. Relying on that assurance, petitioner has annually notified the Clerk and Howard University of his continuing intention to again petition for review of that Court of Appeals order dated September 22, 1978 in P.D.N. 288, September Term, 1978.

ESTATE OF ELIZABETH ANN RICHARDS:

The Petition for a Writ of Certiorari is timely seeking review of a Judgment Order of the Court of Appeals of

Maryland, entered on August 1, 1990, which refused discretionary review of the final order of the Orphan's Court, dated August 21, 1989. The Chief Justice extended the filing deadline to Nov. 29, 1990.

There can be no doubt that the Orphan's Court Order, review of which was refused by the Court of Appeals of Maryland, is more than just a final Judgment. It is the final Judgment Order that will be entered in Administration No. 008-01-84, unless an appellate review is had. In the body of the order, it is stated, verbatim:

"In consideration of the approval of all final accountings filed in the above case, and all appeals thereto having been exhausted, it is this 21st day of August, 1989, by the Circuit Court of Montgomery County, Maryland,

"ORDERED, that the Estate of Elizabeth Ann Richards, deceased, is CLOSED; and it is further

"ORDERED, that the "Motion Seeking Completion of the Administration of the Estate of Elizabeth Ann Richards" be and the same is hereby STRICKEN; and it is further

"ORDERED, that no further pleadings are to be accepted for filing in the above-captioned case."

STANDING AND SUBSTANTIAL FEDERAL QUESTION

As Justice Powell, for the Court sets forth in Warth v. Seldin, 422 U.S. 490, 45 L. Ed. 2d 343, 95 S. Ct. 2197:

"In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out of a 'case or controversy' between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."

ESTATE OF EDITH A. PARSONS:

Petitioner has standing; he was heir at law (nephew) of decedent Edith H. Parsons; he was the Executor of her estate and one of three residuary legatees of her last will and testament. He contends that the egregiously erroneous judicial sale of real property devised to him by her will's residuary clause, supposedly completed in the ancillary decedents estate administration, required the collaboration of Petitioner's successor, the Suburban Trust Co., as a domiciliary Personal Representative, and raises the substantial federal question of Petitioner's right under the Fourteenth Amendment not to be deprived of property without due process of law as well as his right to due process protection in that regard under the Fifth Amendment. The Suburban Trust Co. knew or should have known that

his rights were being violated but did not heed his call for help. The September 22, 1978, judgment of the Court of Appeals of Maryland in P.D.N. 288 Sept. Term, 1978, was obtained and closed the estate over Petitioner's protestations. The substantial question is whether or not that final judgment is the last in a series of acts in violation of his federal constitutional rights.

The violation of your petitioner's 5th and 14th Amendment rights, including the failure of notice in his removal proceedings with resultant failure of meaningful opportunity to be heard and exert influence, both inside and outside of the legal proceedings, to which his status entitled him, were issues framed with fair precision he is confident it will be found from the record as a whole. As this court said in New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 67,

speaking of "fair precision", ". . . if the record as a whole shows either expressly or by fair intendment that this was done, the claim is to be regarded as having been adequately presented."

Petitioner ". . . has made out a 'case or controversy'" between himself and defendants Suburban Trust Co., et al., it being controversial whether or not his removal as Executor was done constitutionally and did or did not result in a deprivation of property because the Court of Appeals of Maryland, before enactment of the statutory grounds for removal in 1969, repeatedly held that the right to administer is a valuable one. See Smith v. Waller, 225 Md. 94, 169 A.2d 454.

The order (see page 21) removing Petitioner as Executor of the Parsons estate made two findings commensurate with the statutory mandatory

removal grounds of now Section 6-306(a) of the Maryland Code of Estates and Trusts Article. It said he had "Mismanaged property" which was neither alleged in the Rule to Show Cause Motion nor adequately supported by evidence presented at the hearing. The second finding was that Petitioner "is unable or incapable, with or without his own fault, to discharge his duties and powers effectively" and this mandatory ground Petitioner avers was not addressed in anyway (Petitioner's sisters gave no testimony) in any of the removal proceedings and is, per se, a constitutionally flawed statute denying due process and equal protection Petitioner respectfully opines.

Nothing in the grounds for removal statutes of E.T. Section 6-306(a) negates the common law set forth by Judge Hammond

in Smith v. Waller, supra, when it was said:

"This Court has said and held repeatedly that, although an executor will be unhesitatingly removed for serious cause, yet, in the absence of fraud, bad faith, collusion or breach of trust and prejudice to the estate letters will not be revoked until the executor in default has failed to comply with an order to make good his default or omission." (emphasis added.)

Petitioner did not fail to comply. No order was issued giving him an opportunity to comply. To the best of Petitioner's knowledge, no fault or omission was extant and there had been no complaints by the Office of the Register of Wills. Surely Petitioner has brought ripe justiciable controversies to the Court and there is cause for urgency. The controversy over his removal as Executor with loss of commissions and ability to see to it that the estate Administration was conducted prudently

exhibits his personal stake therein. This is an old case but not a moot one. The question of title to D.C. real property, the conflict between the law of wills and permitted procedure with regard to judicial sales and divestiture cry out for judicial intervention, Petitioner respectfully submits.

ESTATE OF ELIZABETH A. RICHARDS:

Petitioner's standing is based on his statutory right to bring the caveat in the first place. As the sole top-priority heir of his only surviving sibling, his sister, he stands to inherit whatever might remain of her estate if a conclusive adjudication can be had as to whether she died intestate or not. This personal stake in the litigation's outcome points up the obvious "case and controversy" between your Petitioner and both of the individuals who administered her estate--Personal Representatives

David B. Nicholson and his successor, Mark A. Richards, Petitioner's son. It was in August 1989 that the assets, including \$448,306.31 in cash, were distributed to Mark Allen Richards after a meeting in Judge John Mitchell's chambers no notice of which was given to Petitioner (See appendix p. 114). This issue of intestacy, while already beyond ripeness, is certainly not moot. The need for judicial intervention persists lest an absolute subversion of his caveat proceeding work an horrendous injustice on your Petitioner. Despite every effort Petitioner could make within the confines of the legal process available to him to have Mark Richards post bond and be enjoined from removing the assets from Maryland, those remedial procedures were denied to Petitioner. The substantial federal question is whether an inappropriate assertion of "state

ights", with regard to the law of wills
and real property viewed in the spacious
framework of structure Perris v. Higley
bestowed on Orphan's Courts, will prevail
over what to Petitioner seems a First
amendment right--a need to know--a right
to demand full expression of the reasons
actions have been taken and what seems to
Petitioner to be a most urgent need for
improvement in the law of procedural due
process.

Petitioner respectfully submits that
these two cases fall within Rule 12.2 as
involving ". . . identical or closely
related questions, . . ." and that this
single petition should suffice to allow
consideration on the merits of them both.
They both, within the meaning of Rule 10,
present a special and important reason
or judicial review, id. est: Maryland
state courts have decided, as an
important question of federal law, that

because of what this Court said in Perris v. Higley of the nature of Orphan's Courts that other and further federal constitutional law has no application in their Orphan's Courts and this important question has not been, but should be, settled by this Court.

ADEQUATE STATE GROUND

In the Matter of the Parsons Estate Petitioner asked the Court of Appeals of Maryland to certify that in arriving at its grounds for decision, in Petition Docket No. 288, closing that estate, it passed upon his constitutional rights. However, the certificate merely states (See appendix p. 79) that the decision was based on the statutory grounds set forth in Title 12-203 of the Courts and judicial Proceedings Article of the Annotated Code of Maryland, namely, that the review sought was not considered to be "desirable and in the public

interest." One can only infer that the Court of Appeals, perhaps because of Perris v. Higley, and the Appellate decision in Alban Tractor Co. v. Bullock, 44 Md. App. 699 (1980) that Orphan's Courts in Md. sit neither at law or in equity, posited it as unnecessary to answer petitioner's ignorant question, it being to that court obvious that federal constitutional law doesn't apply to Orphan's Court cases or to plenary proceedings contained therein. Should that really be the Supreme Law of the land? In both the Richards and Parsons cases, the question is did the refusal of the Court of Appeals of Maryland to exercise its discretion, as limited by C. & J.P. Section 12-203, result in decisions based on adequate and independent state or non-federal grounds barring this court's jurisdiction?

Given that the Tenth Amendment has, to date, reserved to the States almost unbridled power to create the substantive laws of real property, wills and estates, and intestate succession, can the practical application of those laws deny, under the guise of states rights, common decency and fairness found in societies much less advanced than ours? Procedural due process should most certainly require that the statutory right to bring a Will Caveat and have it tried on its merits in accordance with the law not be arbitrarily subverted by a Judge's preconceived notion that the law of wills with its paramount concern being to implement the testators' intentions, as they appear to that Judge, should be given a stultifying dominance, and greater weight than the jury trial rights of a caveator. Such an imbalance in the "quality" of the law, such a conflict of

laws, rooted in an outdated conception of state rights, should not be permitted to violate rights under the Fifth and Fourteenth Amendments and that is what Section 12-203 of the Estates and Trusts Article of the Md. Codes has thus far enabled the Court of Appeals of Md. to do to Petitioner without even so much as compliance by that court with its own rules while so doing!

Chicago, B.Q.R. Co. v. Illinois ex rel Grimwood, 200 U.S. 561, 50 L.Ed. 596 (1906) states the general rule"

Undoubtedly . . . where the judgment of the state court rests upon an independent, separate ground of local or general law, broad enough or sufficient in itself to cover the essential issues and control the rights of the parties, however the Federal question raised on the record might be determined, this court will affirm or dismiss, as the one course or the other may be appropriate, without considering the question. But it is equally well settled that the failure of the state court to

pass on the Federal right or immunity specially set up, of record, is not conclusive, but this court will decide the Federal question if the necessary effect of the judgment is to deny a Federal right or immunity specially set up or claimed, and which, if recognized and enforced, would require a judgment different from one resting upon some ground of local or general law.

What federal right does petitioner have then, or could have if recognized and enforced? Petitioner contends that in addition to his Fifth and Fourteenth Amendment right not to be deprived of his property without due process of law, and, in the matter of his removal as estate executor in the Parsons administration his right to the equal protection of the law, he has or rather should have the jury trial rights he proposes be recognized and enforced in Question No. Six.

There is no question but that the necessary effect of the judgment pursuant

to E.T. 12-203 if permitted to stand will deny the federal rights claimed but the inquiry must be made concerning E.T. 12-203's sufficiency, breadth, and quality as local or general law to cover the rights of the parties, independently of how the raised federal question might be determined. If 12-203 passes the test, the lower courts' decision(s) won't be disturbed however the federal questions raised on the record might have been determined or were determined. In petitioner's two cases, the grounds of desirability and public interest prevented reviews which would have revealed the unconstitutionality of petitioner's removal as executor, deprivation of his property, denial of his appeal rights and his jury trial rights. Not a single issue that he raised during any of the appeals to the

Court of Appeals of Maryland was passed on.

The self-protection and insulation made available to the Court of Appeals of Maryland by reason of Section 12-203 is understood and appreciated when the annotation to it is read. It says: "The Creation of the Court of Special Appeals and the establishment of the certiorari procedure were designed to decrease the work of the court and its then expanding case load. Walston v. Sun Cab Co., 267 Md. 559, 298 A.2d 391 (1973)." However, the unwillingness of the legislatures to adequately fund our court systems, while ridiculous to the point of being a national disgrace, should not be permitted to thwart this Court's jurisdiction. It is certainly not a court's role to be chagrined in the discharge of its official duties by acrimonious litigation engaged in by the

people, and, to dispose of these disputes by labeling them as undesirable to review is to dispose of them on a patently inadequate, irrelevant ground, it is respectfully submitted.

Petitioner respectfully submits that this Court's decision in McCoy v. Shaw, 277 U.S. 302, 72 L.Ed. 891, 48 S.Ct. 519, could be found to be controlling in this matter, and Section 12-203 found to be so plainly unfounded when invoked as to petitioner's constitutional claim of right, that it may be regarded as essentially arbitrary or a mere device to prevent the review of a decision upon the federal question. Also, potentially dispositive of the issue of jurisdiction is this Court's holding in Durley v. Mayo, 351 U.S. 282, 76 S.Ct. 806, where it said:

But it is likewise well settled that if the independent (state) ground was not a

substantial one, "it will be presumed the State court based its judgment on the law raising the Federal question, and this court will then take jurisdiction." [Citations omitted.]

How can 12-203 be substantial and sufficient enough to bar the jurisdiction of this Court? It can't. It is petition's cases simply an estate settling device, invoked by the Court of Appeals of Maryland to avoid confrontation with the difficult task of recognizing error and denials of due process in the Maryland courts.

The Court of Appeals of Maryland like all state and federal courts, has constitutional obligations to safeguard personal liberties and uphold federal law, Stone v. Powell, 428 U.S. 465, L.Ed. 2d 1067 96 S.Ct. 3037 (1976).

CONSTITUTIONAL PROVISIONS

Article III

Section 2.

The judicial power of the United States shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States, . . .

Bill of Rights

Fifth V

No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Seventh VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, . . .

Ninth IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Tenth X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Fourteenth XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

DISTRICT OF COLUMBIA CODE 1973 EDITION

Section 20-353. Application for letters; contents; bond; sale of real estate [in pertinent part]:

. . . If it becomes necessary to sell the real estate of the decedent, in part

or in whole, the executor or administrator shall give such additional bond, with approved security, as the court directs, to secure the proper application of the proceeds arising from the sale. Where an executor is empowered by the will to sell the real estate of the testator, for any purpose, he shall account for the proceeds in the court. (Sept. 14, 1965, 79 Stat. 708, Publ. L. 89-183, Sec. 1, eff. Jan. 1, 1966.)

**ANNOTATED CODE OF MARYLAND
Maryland Rules Vol. 1 1989**

Rule 1-202. DEFINITIONS

(m) **Judgment.** - "Judgment" means any order of court final in its nature entered pursuant to these rules.

(r) **Pleading.** - "Pleading" means a complaint, a counterclaim, a cross-claim, a third-party complaint, an answer, an answer to a counterclaim, cross-claim, or third-party complaint, a reply to an answer, or a charging document as used in Title 4.

Maryland Rule 2-325, Jury Trial,
verbatim in pertinent part:

(a) **Demand.** - Any party may elect a trial by jury of any issue triable of right by a jury by filing a demand therefor in writing either as a separate paper or separately titled at the conclusion of a

pleading and immediately preceding any required certificate of service.

(b) **Waiver.** - The failure of a party to file the demand within 15 days after service of the last pleading filed by any party directed to the issue constitutes a waiver of trial by jury.

Rule 2-501. MOTION FOR SUMMARY JUDGMENT

(a) **Motion.** - Any party may file at any time a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if filed before the day on which the adverse party's initial pleading or motion is filed.

(b) **Response.** - The response to a motion for summary judgment shall identify with particularity the material facts that are disputed. When a motion for summary judgment is supported by an affidavit or other statement under oath, an opposing party who desires to controvert any fact contained in it may not rest solely upon allegations contained in the pleadings, but shall support the response by an affidavit or other written statement under oath.

(c) **Form of Affidavit.** - An affidavit supporting or opposing a motion for summary judgment shall be

made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(d) **Affidavit of Defense Not Available.** - If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

(e) **Entry of Judgment.**- The court shall enter judgment in favor of or against the moving party if the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgement as a matter of law. Upon compliance with Rule 2-602 (b), the court may direct entry of judgment (a) for or against one or more but less than all of the parties to the action, (2) upon one or more but less than all of the claims presented by a party to the action, or (3) for some but less than all of the relief

requested when the claim for relief is for money only and the court reserves disposition of the balance of the amount requested. If the judgment is entered against a party in default for failure to appear in the action, the clerk promptly shall send a copy of the judgment to that party at the party's last known address appearing in the court file.

(f) Order Specifying Issues of Facts Not in Dispute. - When a ruling upon a motion for summary judgment does not dispose of the entire action and a trial is necessary, the court, on the basis of the pleadings, depositions, answers to interrogatories, admissions, and affidavits and, if necessary, after interrogating counsel on the record, may enter an order specifying the issues or facts that are not in genuine dispute. The order controls the subsequent course of action but may be modified by the court to prevent manifest injustice.

(Amended Apr. 8, 1985; Apr. 7, 1986,
effective July 1, 1986.)

Petitioner avers that 2-501 as amended above evidences the full force in effect of the rule as it applied to the aggrieving summary judgment dated Sept. 11, 1985.

ANNOTATED CODE OF MARYLAND
Maryland Rules Vol. 1 (1985)

Maryland Rule 870, Decision by this

Court - Finality:

Except as otherwise provided by Rules 835 (Dismissal of Appeal) and 871 (Remand), this Court will either affirm or reverse the judgment from which the appeal was taken, or direct the manner in which it shall be modified, changed or amended. The decision of this Court shall be final and conclusive.

Maryland Rule 871, Remand.

a. For Further Proceedings:

If it shall appear to this Court that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment from which the appeal was taken, or that the purposes of justice will be advanced by permitting further proceedings in the cause, either through amendment of the pleadings, introduction of additional evidence, making of additional parties, or otherwise, then this Court, instead of entering a final order affirming, reversing or modifying the judgment from which the appeal was taken, may order the case to be remanded to the

appropriate court. Upon remand to the appropriate court, such further proceedings shall be had by amendment of the pleadings, introduction of additional evidence, making of additional parties, or otherwise, as may be necessary for determining the action upon its merits as if no appeal had been taken and the judgment from which the appeal was taken had not been entered; provided, however, the order entered by this Court remanding case, and the Opinion of this Court on which said order is passed, shall be conclusive as to the points finally decided thereby. In such an order remanding a case, the Court will express the purpose for so remanding and in its opinion filed with said order will determine all questions which may have been properly presented.

**ANNOTATED CODE OF MARYLAND (1974)
Estates and Trust Article**

S 2-105. Plenary proceeding.

(a) Determination of an issue of fact. - In a controversy in the court, an issue of fact may be determined by the court.

(b) Transfer of determination to law court. - At the request of an interested person made within the time

determined by the court, the issue of fact may be determined by a court of law. When the request is made before the court has determined the issue of fact, the court shall transmit the issue to a court of law.

(c) Order based on determination. - After the determination of the issue, whether by the court or after transmission to a court of law, the court shall enter an appropriate judgment or decree.

(d) Exception. - This section does not apply where the estate is administered under the jurisdiction of a court having general equity jurisdiction. (An. Code 1957, art. 93, § 2-105; 1974, ch. 11, § 2.)

S 5-207. Caveat proceeding.

(a) Filing petition to caveat. - Regardless of whether a petition for probate has been filed, a verified petition to caveat a will may be filed at any time prior to the expiration of six months following the first appointment of a personal representative under a will, even if there be a subsequent judicial probate or appointment of a personal representative. If a different will is offered subsequently for probate, a petition to

caveat the later offered will may be filed at a time within the later to occur of

(1) Three months after the later probate, or

(2) Six months after the first appointment of a personal representative of a probated will.

(b) Effect of petition.- If the petition to caveat is filed before the filing of a petition for probate, or after administrative probate, it has the effect of a request for judicial probate. If filed after judicial probate the matter shall be reopened and a new proceeding held as if only administrative probate had previously been determined. In either case the provisions of Subtitle 4 of this title apply.
(An. Code 1957, art. 93 § 5-207; 1974, ch. 11 § 2.)

§ 6-307. Request for judicial probate.

(a) General. - The appointment of a personal representative who has been appointed by administrative probate is terminated by a timely request for judicial probate. The validity of an act performed by him as personal representative is not affected by this termination.

(b) Interim powers. - Subject to an order in the proceeding for judicial probate, a personal representative appointed previously has the powers and duties of a special administrator until the appointment of a personal representative in the judicial probate proceeding.

(c) Reappointment. - A person, whose appointment as a personal representative is terminated by a request for judicial probate, may be reappointed. (An. Code 1957, art. 93, § 6-307; 1974, ch. 11, § 2.)

§ 6-307. Annotation

Request for judicial probate automatically terminates an administrative probate previously granted. Carrick v. Henley, 44 Md. App. 124, 407 A.2d 765 (1979).

When personal representative himself petitioned the orphans' court for judicial probate, he terminated his own appointment as personal representative which was made upon administrative probate. Schlossberg v. Schlossberg, 275 Md. 600, 343 A.2d 234 (1975).

§ 12-203. Action by Court of Appeals.

If the Court of Appeals finds that review of the case

described in § 12-201 is desirable and in the public interest, the Court of Appeals shall require by writ of certiorari that the case be certified to it for review and determination. The writ may issue before or after the Court of Special Appeals has rendered a decision. The Court of Appeals may by rule provide for the number of its judges who must concur to grant the writ of certiorari in any case, but that number may not exceed three. Reasons for the denial of the writ shall be in writing. (An. Code 1957, art. 5, §§ 5D, 21A; 1973, 1st Sp. Sess., ch. 2, § 1.)

b. . . .

Maryland Rule 876, Mandate.

A. To Evidence Order of this court:

The order of this Court dismissing an appeal of affirming or reversing in whole or in part, or modifying the judgment from which the appeal was taken, or awarding a new trial, or entering a final judgment pursuant to Rule 875 (Final Judgment in This Court) shall be evidenced by the mandate of this Court which shall be certified under the seal of this Court by the Clerk. It shall not be necessary for any formal order or judgment other than the

mandate to be signed or transmitted to the lower court.

B. When to Be Issued.

Unless otherwise ordered by this Court, the mandate shall be issued as of course by the clerk upon the expiration of thirty days after the opinion of this Court has been filed or the order or judgment of this Court has been entered, and shall be transmitted by him to the appropriate court.

C. To Contain Statement of Costs.

The mandate shall contain a statement of the costs taxable to the appellant and the appellee and of the order of this Court awarding costs.

D. Effects of Mandate.

When the mandate has been transmitted the appropriate court shall proceed according to the tenor and directions thereof.

STATEMENT OF THE CASE

The record will show petitioner has met the burden of framing the constitutional questions with the particularity required--he did so time and time again by ". . . averments so distinct and

positive as to place it beyond question that the party bringing a case here from such court intended to assert a federal right. Axley Stave Co. v. Butler County, 166 U.S. 648, 655."

In the Parsons administration Petitioner first raised the question of his constitutional rights in the domiciliary proceeding in the Circuit Court for Montgomery County, Maryland, sitting as the orphan's court, at a hearing on October 17, 1974, of a Rule to Show Cause in case No. 017-05-73J in a plea for a continuance. (Page 28, Official Record of the Circuit Court.) They were raised again in his appellant's brief in case No. 1077 before the Court of Special Appeals of Maryland and, again in his appellant's brief in case No. 1378 before the Court of Special Appeals, again in his Motion for a rehearing of case No. 1378; and finally, they were raised in

Petition Docket No. 288 before the Court of Appeals of Maryland.

Petitioner first raised the question of his constitutional rights in the District of Columbia ancillary proceeding at a hearing, held, on December 6, 1973, to require him to show cause why he, inter alia, should not be required to execute a deed to complete the judicial sale. (See page 25, official court reporter transcript.)

In the Richards administration the question of Petitioner's constitutional right to due process of law was first raised, by his attorney, in Case No. 90 Sept. Term, 1986 in the Court of Appeals of Maryland in the Petition for a Writ of Certiorari to the Court of Special Appeals of Maryland as the question presented for review, to wit, "Does Maryland rule 2-132, as interpreted by the trial court, and the Court of Special

Appeals, violate due process?" That question was ignored by the Court of Appeals in its remanding mandate. (See appendix p. 96.) Petitioner continued to raise both Maryland and United State issues of constitutionality time and time again during the appellate process as the record will disclose.

Estate of Edith A. Parsons:

Anc. Adm. John Hamilton, the ward's death having ended the conservatorship and application of the pertinent statutory scheme (See *in re Brier*, 48 N.J. Super. 450 A.2d 617 (1958) thereon, undertook to complete what had started as a real estate judicial sale. At a conference with Petitioner, the Executor, and his attorney, Jas. B. Ostmann, he withdrew his willingness, earlier expressed by telephone, to assist Petitioner in obtaining a loan to pay estate taxes. He said, in effect, that

he was disappointed to learn that Petitioner had no intention of "going along with the sale," so he would go ahead and to quote, ". . . do it my way. . .". This was an ancillary administrator d.b.n. c.t.a. telling it to the estate executor appointed in the decedent's domicile. He did it his way but made no showing of necessity for the sale required by D.C. Code Title 20-353. No hearing was held on the question of the "sale's" necessity under 20-353 the supposed divestiture of the devisee's title to the realty took place with no formality, in fact, ordered to do it, Hamilton did it either clandestinely or without notice to Petitioner who earlier had refused to comply with an order to sign a deed for which noncompliance he was removed as D.C. Anc. Admin. Hamilton "sold" an interest (1/2) that was valued

in the estate inventory at \$275,000.00 for \$200,00.00.

There was never a time in the entire estate administration when some action was not being taken while some other previous action was "up on appeal." As Executor Petitioner felt like an unsecured creditor.

Petitioner's removal in Maryland as Executor was also a complete mockery of procedural as well as substantive due process. Removal called for a "Petition," but was alternatively done, correctly initially, according to Md. case law, by Motion for a Rule to show cause but the rule was issued before any semblance of a hearing on the rule was held. No hearing was held! Petitioner appeared at the hearing on the issued rule, however, and quickly sensing a lack of due process and a belligerence of his sister's attorney, David B. Nicholson,

which told him that he, Nicholson, rather than making an effort at conciliation or to reconcile the differing attitudes toward administrative events, was indifferent to Petitioner's position and in control of his clients, Petitioner's two sisters, to such an extent that little if anything could be done at that moment. Petitioner asked for a continuance to obtain Counsel and prepare defense but the Judge refused overwhelmed by the obfuscating affidavit of the two sister's, carefully prepared by their attorney Nicholson, containing evidence insufficient in both weight and substance to establish mismanagement of property or inability to discharge duties effectively or failure, without reasonable excuse, to perform any material duty. Petitioner's late filing (less than 10 days) of the inventory, the only real evidence, had been verbally

cleared with the Register of Wills Office before the deadline for its filing but with no continuance and no oral testimony from anyone except your Petitioner, he was removed.

The controversy over the administration of the estate of E. A. Parsons, within the meaning of Rule 12.2, involves identical and closely related questions to those raised in the Richards estate and the interests of justice and equity, it is respectfully submitted, require that they both be reviewed.

One third of the Parsons estate residuary passed to each of the siblings--Petitioner and two spinster sisters. Until the death of Barbara in 1979 Petitioner had thought, as a previous will provided, that he would share in Barbara's estate equally with Elizabeth Ann just as he would have shared in Elizabeth's estate, under her

previous will, had she predeceased Barbara. This is what he thought because he prepared both of those wills. Neither David B. Nicholson nor his sisters, nor anyone else, gave him an inkling of an idea that either will had been changed. Petitioner thought his sisters' legal actions were motivated by ignorance and, consequently, distrust, as distinguished from illness or lack of love, and, by disagreement concerning the sale of Howard Manor Apartments by judicial sale, and by desires to live their own lives, and, by, sadly, the advice of David B. Nicholson and Nicholson's unwillingness to meaningfully communicate with your Petitioner. All of Barbara's estate passed to Elizabeth and, aside from remarking to Elizabeth that he thought that "not right," to which her only response was, "Well, she's doing the same thing for me." Therefore, Petitioner

took no action (See appendix pp. 74 & 77) feeling deep in his heart that his sister Elizabeth loved and respected him and, certainly would not try to "disinherit" him under, Petitioner is convinced, undue influence or, unbeknownst to him, mental impairment rendering her without adequate testamentary capacity to execute a valid will. Barbara's will passed approximately \$196,000.00 to Elizabeth, most of which had been part of the Parsons estate--so a part of the corpus in both estates is the same and therefore the question of its ownership are questions common to both controversies.

The question of the adequacy of Section 12-203 C. & J.P. of the Md. Code to prevent invocation of this Court's jurisdiction in both cases is identical and, surely, the application of the Fourteenth and other Amendments to both are identical and, to the best of

Petitioner's knowledge, the two cases if reviewed as one proceeding, would be a case of first impression.

Estate of Elizabeth Ann Richards:

In Maryland, discovery procedures and the Summary Judgment are available both in Orphans Court and in the plenary proceeding, known as "Issues From the Orphans' Court", and the state has carefully proclaimed that its Orphans' Courts sit neither in law nor in equity, making them truly unique vestiges of the chancery courts and the ecclesiastical courts before them, Alban Tractor Co. v. Bullock 44 Md. App. 699 (1980), with the judges of the circuit Court for Montgomery County, Maryland, who sit on rotation as Orphans' Court judges, having little inhibition to hark back to the days of secret testimony, etc., especially since the merger of law and equity, and Petitioner's right to due

process of law and his jury trial rights have been denied to him as a result.

The Court of Appeals of Md. has denied Petitioner his right to appellate review. (Harris v. State, 6 Md. App. 7.)

Petitioner submits that this Court should find and declare that he has a fundamental "liberty" to initiate a legal action, maintain it free from excessive court costs and clerks' fees, develop it by discovery and, with the aid of fair and reasonable continuances, try it on the merits, with findings as to the rights involved. A "liberty" denied to him for no good reason pertaining to the other persons involved or to a governmental purpose of any kind, it is almost as though his cause has been sacrificed on the altar to the gods of Arbitrariness.

The use of Summary Judgment on caveat issues is fraught with danger.

The caveat is most of the time more akin to a criminal case than a civil action and the motives and intent of the witnesses, essential ingredients so often in the search for the truth, need to be probed into in open court, in an adversarial environment with cross examination.

The will caveat "Issues" case would not be decided by Summary Judgment under any circumstances if your Petitioner were doing the deciding, rather, it would be the one unique form of legal action where, if any litigant with enough at stake chose it, be he a caveator or caveatee--there would be a jury trial with a judge bound to let the jury decide on an issue if a shade more than a scintilla of clear evidence is present from which reasonable inferences can be drawn. That not being the present situation in Maryland because of the case

of Hill v. Lewis, 318 A.2d 850 (1974), Petitioner respectfully submits that in an "Issues" case, Summary Judgement should lie only after the presence or absence of a genuine dispute as to any material fact has been abundantly established by discovery testimony, which could not, in the highest degree of probability, be altered significantly by cross-examination in open court.

In Petitioner's caveat, he alone had been deposed when the Summary Judgment Motion was made. The two person's Petitioner is most suspicious of having unduly influenced his sister had not given any testimony whatsoever. Caveatee's attorneys refused to consent to a continuance so Petitioner could obtain new counsel and knowing not what to expect, Petitioner went to the hearing to ask for a continuance, expecting his attorney, armed with Petitioner's

consent, to be there for permission to withdraw, but the judge apparently had permitted that to happen in chambers the previous day, where the attorney could possibly have said something to the judge, prejudicing Petitioner's case at the hearing next day and the incredibly erroneous Summary Judgment was rendered.

The Judgment for Sanctions against Petitioner, recorded as a lien on his residence, was rendered by the law court when jurisdiction to render it could only be in the court with overall control and knowledge of the equities involved--the Orphans' Court. Concurrent jurisdiction over sanctions shouldn't be permitted in law courts on "Issues" cases from Orphans Courts except with regard to abuse of discovery and refusal by the Appeals Courts to review this question is a denial of due process under the equal protection clause Petitioner will

persuade the Court to acknowledge and decree by his brief, your Petitioner respectfully submits.

ARGUMENT

"The Constitution is fundamentally a public text--the monumental charter of a government and a people--and a Justice of the Supreme Court must apply it to resolve public controversies."¹

Is Petitioner's cause enough of a public controversy to warrant the undertaking of a certain amount of that imperativeness, referred to by Justice Brennan, by the Justices of this Court in voting on this petition? Petitioner endeavors to prove that it is because his cases present an infrequent opportunity to not only correct damage done to an individual Petitioner or provide a remedial step in that direction, but an

¹Address of Justice Wm. J. Brennan at Georgetown University Text and Teaching Symposium, October 12, 1985.

opportunity to carry out a review of a multi-state estate administration highlighting the difficulties in such administrations under existing law, indeed, the difficulties in many single jurisdiction estate administrations under existing law; and, to bring forth results which will be constructively creative, clarifying and explanatory with regard to the law of decedents' estate administration and the interplay of it with federal procedural due process and equal protection and the state laws of real property, wills and the law of the conflict(s) of laws both state and federal. Such a review could be very educational and enure to the enhancement of the general welfare of the people; and, who can foretell, might also result in "a kinder and gentler America." One thing is certain--a review of these estates should result in an enormous

amount of time-saving for the citizens who will, it is fervently hoped, know within much fairer and meaningful time limits not only where they stand legally in these matters but where everyone else, either involved or potentially involved, stands, what they stand for, and what duties are owed one to the other(s). These your Petitioner respectfully submits are special and important Rule 10 reasons for granting this petition.

CONCLUSION

Petitioner can only pray that the writ(s) will issue to serve the interests of justice and equitable fairness for all involved. He hopes in considering this Petition that the Justices will take judicial notice of his other petitions to the Court as evidence of his clean-hands approach and good-faith belief in the righteousness of his cause and in his belief that if he succeeds in it he will

be better enabled to carry out all of his family responsibilities.

Respectfully submitted,



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(202)797-7416
(804)425-7699

CERTIFICATE OF SERVICE

I hereby certify that three copies of this Petition for a writ of certiorari were mailed, with first-class postage pre-paid, this 23rd day of November, 1990, to all parties required to be served listed below, as well as to all of the others listed below:

Ms. Sallie Scott
514 Tuckerman St., N.W.
Washington, DC 20011

A Legatee
of both
estates

David B. Nicholson
4530 Wisconsin Ave., N.W.
Washington, DC 20016

Former Per.
Rep. of
Est. of
E.A.
Richards

Mark Allen Richards
c/o Mrs. Helen Richards
P.O. Box 6017
McLean, VA 22106

Successor
Per. Rep.
Est. of
E.A.
Richards

Howard University, a DC
Corp.
c/o Office of General
Counsel
2400 - 6th St., N.W.
Suite 309
Washington, DC 20059

Judicial
Sale Vendee

Smithy Braedon Company
c/o Pres. Jas. Eichberg
808 - 17th St., N.W.
Washington, DC 2006

Recipient
of
Sales Comm.

Patricia P. Hamilton,
Personal Rep. of the
estate of John Hamilton,
deceased
c/o Jas. C. Gregg,
Attorney at Law
1625 Eye St., N.W.
Washington, DC 20006

Deceased
was anc.
adm.
d.b.n.,
c.t.a. of
E.A.
Parsons
estate

Office of the Attorney
General - Civil Div.
State of Maryland
200 St. Paul Plaza
Baltimore, MD 21202

Sovran Bank Trust Dept.,
Successor to
Suburban Trust Co.
Trust Dept.
6610 Rockledge Dr.
Bethesda, MD 20817

Successor
Personal
Rep. Est.
of E. A.
Parsons

Mr. John Eris Powell
5208 Chamberlain Dr.
(Kenwood)
Chevy Chase, MD 20015

The D.C.
Conservator
of Est.
of E.A.
Parsons

McDermott Insurance, Inc.
808 - 17th St., N.W.
Washington, DC 20006

American Insurance Co.
2990 Telestar Court
Falls Church, VA 22042
(Represented in Law No.
42462 in Circuit
Court for Montgomery
Co., Md. by attorney
Jas. K. Foley, 8701
Georgia Ave., Silver
Spring, MD)


Julian I. Richards
Petitioner, Pro Se



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LAST WILL AND TESTAMENT

I, Edith A. Parsons, being of sound mind and disposing memory and without duress, do hereby make, declare and publish this instrument to be my Last Will and Testament, hereby revoking all prior testamentary dispositions:

1. I nominate and appoint my nieces, Elizabeth Ann Richards and Barbara Jane Richards, as co-executrixes of this My Last Will and Testament.

2. I direct said executrixes to pay my just debts and the expenses of my last illness and burial as soon as expedient.

3. I give and bequeath to Frances Parsons Miller, the niece of my late husband, James L. Parsons, Jr., deceased, the sum of Three Thousand Dollars (\$3,000.00).

4. I give and bequeath to my niece, Elizabeth Parsons Gates, the sum of Three Thousand Dollars (\$3,000.00).

5. I give and bequeath to my niece, Doris Lange, the sum of Three Thousand Dollars (\$3,000.00).

6. I give and bequeath to Sallie Scott, who so faithfully served Mr. Parsons and me for many years, the sum of One Thousand Dollars (\$1,000.00).

7. All the rest, residue and remainder of my property, both real and personal, wherever situated, I give, bequeath and devise to my said nieces, Elizabeth Ann Richards and Barbara Jane

Richards, and my nephew, Julian Imbrie Richards, Jr., share and share alike.

IN WITNESS WHEREOF, I now subscribe my name to this My last Will and Testament this 17th day of July, 1964.

/s/ Edith A. Parsons

The foregoing instrument was, at the place and date thereof, subscribed, sealed, published and declared by Edith A. Parsons as and for her Last Will and Testament, in our presence, and in the presence of each of us, and we, at her request, and in her presence in the presence of one another, hereunto subscribe our names as attesting witnesses thereto this 17th day of July, 1964.

/s/ Ralph L. Goetzenberger of 5214 Norway Drive, Chevy Chase, Md.

/s/ Martha Totty Smith of 6211 Kennedy Drive, Chevy Chase, Md.

/s/ Helen M. Richards of 4809 Kellogg Dr., McLean, Va.

CODICIL

I, Edith A. Parsons, of Chevy Chase, Montgomery County, in the state of Maryland, do hereby make, publish and declare this to be the first Codicil to my Last Will and Testament dated July 17, 1964.

I revoke paragraph number one of my Last Will and Testament appointing my nieces as my co-executrixes, and hereby nominate and appoint my nephew, Julian Imbrie Richards, as Executor of my Last Will and Testament and request that he be allowed to qualify without security in any jurisdiction it is advisable for him to qualify in, and, he shall have full power in his discretion and in accordance with the code of laws of the state of Maryland to do any and all things necessary for the complete administration of my estate.

In the event my nephew, Julian Imbrie Richards, is unable to serve as my Executor for any reason, I nominate and appoint my nieces, Elizabeth Ann Richards and Barbara Jane Richards, to serve as my co-executrixes with the same powers and under the same conditions as provided for my Executor in the foregoing paragraph of this Codicil.

I revoke paragraph five (5) of my Last Will and Testament.

I hereby ratify, republish and reaffirm said Will in all respects except as modified and changed by this Codicil thereto.

IN WITNESS THEREOF, I have hereunto set my hand and seal this 10th day of October 1967.

/s/ Edith A. Parsons (SEAL)

The foregoing instrument was, at the place and date thereof, subscribed, sealed, published, and declared by Edith A. Parsons to be the First Codicil to her Will dated July 17, 1964, which will she ratified, republished and reaffirmed in all respects as modified by this Codicil, in our presence, and, in the presence of one another, we hereunto subscribe our names as attesting witnesses thereto this 10th day of October 1967.

/s/ Barbara Jane Richards of 5210 Norway Dr., Chevy Chase, Md.

/s/ Elizabeth A. Richards of 5210 Norway Dr., Chevy Chase, Md.

/s/ Julian I. Richards of 6219 Kellogg Dr., McLean, Va.

JOHN ERIS POWELL
Attorney At Law

The Honorable Alexander L. Stevas
Clerk
District of Columbia Court of Appeals
400 F Street, N.W.
Washington, D.C. 20001

Re: No. 7726
In re: Edith A. Parsons,
A Conservatorship

Dear Mr. Stevas:

I have received from your office the notice that the reporter's transcript was docketed on March 26 and a praecipe suggesting that I enter my appearance as counsel for the appellee. Mrs. Edith A Parsons died on February 19, 1973 and I filed my Final Account as Conservator just a few days later.

The Appeal pending in your Court is from an order of the Superior Court authorizing me, as Conservator, to sell Mrs. Parsons' interest in a certain piece of real estate in the District of Columbia in order to raise funds which were then needed for the support of Mrs. Parsons and her household.

In my opinion the death of Mrs. Parsons terminated the conservatorship and my authority to act in pursuance of the Superior Court order. Accordingly, I

consider the Appeal to be moot and I do not intend to enter an appearance.

Sincerely yours,

/s/ John Eris Powell

JEP: v1

cc: Mr. Julian I. Richards

109 Bay Colony Drive
P.O. Box 692
Va Beach, Va (804) 425-7699
23451

October 1, 1980

Rosalie A. Reilly, Register
Office of the Register of Wills
for Mont. Co.
Rockville, Md. 20850

re: Adm. # 0931179
Barbara Richards

Dear Mrs. Reilly

Based on information received on the telephone from your deputies, it appears to me that the first & final account of the captioned estate was approved by the Orphan's Court on September 17, 1980 but that the personal representative did not therein request that her appointment be automatically terminated.

It also appears that the court on its own initiative in accordance with Section 10-101b of the States & Trusts Article may, after proper notices, enter "an appropriate order", including one terminating the personal representatives

appointment and/or rescinding its approval order of September 17, 1980, at any time after 20 days from the date of the initial approval order, unless a written request for a hearing was filed within the 20 day period immediately following the date of the initial approval order.

The writer of this letter, while he has ceased to be an "Interested Person" as defined for its purposes in Title 1 of the Estates & Trusts Article, is the brother of the personal representative, and, is an "Interested Person" as code defined in an estate (0175 73 J. Edith A Parsons) the administration of which has yet to the conclusively, irretrievably, irrevocably and finally closed; an estate whose distributions were, in part, made to Barbara Jane Richards and in large part passed thru the administration of the Captioned estate and are reflected in the account approved on September 17, 1980.

In the interest of clarity and to serve the ends of Justice, your writer, therefore, in accordance with the aforementioned Section 10-101b, makes this his timely "request for a hearing" and will be pleased to explain to the court that he has obtained legal counsel to represent him in seeking a reconsideration of the administration of the Edith A. Parsons estate administration as it took place in the District of Columbia, which reconsideration, it is highly probable, will result in a necessity that the entire Parsons estate administration and its multi-state accountings be revised

and audited which will directly affect
the account of the captioned estate.

Sincerely & cordially yours,

Julian I. Richards

C: 1. David L. Hilton
Attorney at Law

2. Joseph J. D'Erasmo
Attorney at Law

3. Betty Ann Richards
Personal Representative



IN THE CIRCUIT COURT FOR MONTGOMERY
COUNTY, MARYLAND
Sitting as the Orphans Court

IN THE MATTER OF THE ESTATE :

OF BARBARA JANE RICHARDS : Case No.
a/k/a BARBARA J. RICHARDS : 093-11-79

Deceased

MEMORANDUM OPINION AND ORDER

Julian I. Richards has forwarded a letter to Rosalie A. Reilly, Register of Wills, which we have directed to be filed as Exceptions to the Final Account in this case and as a request for a hearing thereon.

Section 7-50 of the Estates and Trusts Article gives any "interested person" the right to file exceptions. The term "interested person" is defined in Section 1-101 of the Estates Article. An examination of Section 1-101 discloses the said Julian I. Richards is not an "interested person" as therein defined.

Accordingly, he has no standing to file "Exceptions."

It is, therefore, this 2nd day of October, 1980, by the Circuit Court for Montgomery County, Maryland, Sitting as the Orphans Court,

ORDERED that the "Exceptions" filed by Julian I. Richards be stricken and a hearing thereon denied.

/s/ Joseph M. Mathias
JOSEPH M. MATHIAS
JUDGE

IN THE COURT OF APPEALS OF MARYLAND

JULIAN I. RICHARDS : Petition Docket
No. 28
vs.

SUBURBAN TRUST : September Term
COMPANY Successor 1978
Personal Repre- (No. 1378
sentative of the September Term
Estate of Edit A. 1977
Parsons Court of Special
Appeals

CERTIFICATE

Speaking for the Court of Appeals of Maryland, I hereby certify that the question of whether any action taken in the administration of the Estate of Edith A. Parsons and/or in Appeal No. 1378 (September Term 1977, Court of Special Appeals of Maryland) by either the Court of Special Appeals of Maryland, or the Circuit Court of Montgomery County, Maryland, sitting in Orphans Court, or by the Suburban Trust Company serving as successor personal representative, pursuant to Maryland annotated code provisions pertaining thereto as

reflected by the petition and exhibits on file in the captioned matter, was in its application as it affected petitioner Julian I. Richards and/or the other residuary legatees in said estate administration, either singularly or in combination, in violation of Section 1 of the 14th Amendment to the Constitution of the United States, was a question necessary for this Court to consider in making the judgment it made with regard to the captioned petition and was so considered and passed upon by this Court in making of said judgment.

DATE: _____

Robert C. Murphy,
Chief Judge
Court of Appeals
of Maryland

JULIAN I. RICHARDS

v.

SUBURBAN TRUST COMPANY,
Successor Pers. Rep.,
Estate of Edith A.
Parsons

- * IN THE
COURT OF
- * APPEALS
OF MARYLAND
- * Petition Docket
No. 288
- * September Term
1978
- * (No. 1378 -
September Term,
* 1978
Court of
- * Special Appeals

* * * * *

CERTIFICATE

Speaking for the Court of Appeals of Maryland, I hereby certify that this Court in its considerations leading to the judgment rendered in the above captioned matter, did consider (Digges, J. not participating) the petition of Julian I. Richards for writ of certiorari to review the decision of the Court of Special Appeals of Maryland (a copy of which is attached), but the Court did not find that review of the case was desirable and in the public interest in accordance with Code (1974), Section 12-

203 of the Courts and Judicial
Proceedings Article and therefore denied
the petition.

/s/Robert Murphy

Chief Judge

January 24, 1979.

IN THE
COURT OF APPEALS OF MARYLAND
Petition Docket No. 288
September Term, 1978
(No. 1378, September Term, 1977
Court of Special Appeals)

JULIAN I. RICHARDS

v.

SUBURBAN TRUST COMPANY
Successor Personal Representative,
Estate of Edith A. Parsons

ORDER

Upon consideration of the petition
of a writ of certiorari to the Court of
Special Appeals in the above-entitled
case, it is

ORDERED, by the Court of Appeals of
Maryland, that the petition be, and it is
hereby, denied as there has been no
showing that review by certiorari is
desirable and in the public interest.

Judge Digges did not participate in
the consideration of this petition.

/s/ Robert C. Murphy
Chief Judge

Date: September 22, 1978



LAST WILL AND TESTAMENT

OF

ELIZABETH ANN RICHARDS

I, ELIZABETH ANN RICHARDS, a resident of the State of Maryland, being of sound and disposing mind, memory and understanding, do hereby make, sign, seal, publish and declare the following as and for my LAST WILL AND TESTAMENT, hereby expressly revoking any and all previous wills and codicils heretofore made by me.

ITEM I. I direct my Personal Representative hereinafter named to pay all my just debts as soon as practicable after my decease and my funeral expenses in his discretion without regard to any limitation under the laws of any jurisdiction in which my estate may be administered, and I authorize him to expend such sums as he may deem proper for the engraving of the marker on my

burial site, the cost of which shall be a charge against my estate. I further direct my Personal Representative to pay from my estate any and all estate tax or taxes and any and all transfer tax or taxes or any collateral, inheritance, succession or legacy tax or taxes imposed by law at the time of my death on all property passing under the provisions of this Will and I will and direct that all devises, legacies and bequests herein contained shall descend, be transferred, paid or delivered without any deduction on account of any such tax or taxes.

ITEM II. I give and bequeath unto my faithful employee, SALLIE SCOTT, the sum of five Thousand Dollars (\$5,000.00) or if she should predecease me unto her niece, DOROTHY SCOTT.

ITEM III. All the rest, residue and remainder of my estate of every kind and character whatsoever, including that

which I may hereafter acquire as well as
that which I now own, and including any
property over which I may now have or may
hereafter have any power of testamentary
disposition, I give, devise and bequeath,
absolutely and in fee simple, unto my
nephew, MARK ALLEN RICHARDS.

In the event my nephew, MARK
ALLEN RICHARDS, should predecease me,
then in that event, I give, devise and
bequeath such rest, residue and remainder
of my estate unto his wife, DONNA C.
RICHARDS, as TRUSTEE, in trust and
confidence, however, and upon the uses
and trusts following: to use the net
income therefrom or the corpus thereof,
if my Trustee in her sole discretion
shall deem it necessary, for the care,
maintenance, education and support of my
grandnephew, CAMERON PAUL RICHARDS, until
such time as he shall reach the age of
eighteen years, at which time I direct

that the balance of said share, if any, be paid, transferred, conveyed, turned over and distributed to the said CAMERON PAUL RICHARDS.

In the event of the death of the said DONNA C. RICHARDS or in the event of her incapacity or inability to serve or of her renunciation, I nominate, constitute and appoint SUBURBAN TRUST COMPANY to be TRUSTEE OF THE TRUST CREATED BY THIS ITEM III of my Will.

ITEM IV. I expressly direct that no bond or bonds shall be required of my Trustee under the trusts created in and by this my LAST WILL AND TESTAMENT or of any successor or substitute Trustee or Trustees.

ITEM V. My Trustee under the above trusts shall have full discretionary power and authority to administer, manage and control the property coming to her hands, to collect the rents, revenues,

income, interest and profits therefrom, and shall have full power to lease for any term, encumber, pledge, transfer, sell, exchange, convey, partition, convert and reconvert the whole or any part thereof, upon such terms and conditions and for such consideration as she may deem best, and to compromise according to her discretion any and all claims and other matters affecting the same, no lessee, purchaser, lender or other person, firm, or corporation dealing with the Trustee being required to see to the application of any consideration received by her in any transaction affecting the trust property or to inquire into the Trustee's authority or power in the premises. I authorize my Trustee to retain any real estate, securities including stocks or any other property coming to her hands until such time as she in her sole and

uncontrolled discretion shall consider a sale thereof to be to the advantage of the trust estates, regardless of whether or not such real estate, securities or other property would ordinarily be considered as appropriate for investment of trust funds. The Trustee is authorized and empowered to invest and reinvest the assets of the trust estates as she shall see fit, and shall not be limited to investments which are legal for trust funds in the State of Maryland or in any jurisdiction in which these trust estates shall be administered, and my Trustee is authorized and empowered to purchase and hold corporate stocks and real estate. My Trustee is given full power and authority to exchange any stocks, bonds or other securities of any company or corporation which she may at any time hold, for any cash, stocks, bonds or other property of any other

company or corporation whose stocks, bonds or securities are held by her. The Trustee shall not be responsible for any diminution of the principal of the trust estates which may occur through the depreciation in value of the property or securities in which the funds of the trust estates may at any time be invested.

The Trustee shall not be responsible for any loss or damage which may result from the exercise of judgment or discretion in carrying out the provisions of these trusts, nor for any moneys or properties, real or personal, except such as shall actually and in fact come into her hands and possession. The Trustee shall be entitled to employ such agents and employees as shall be necessary for carrying out the trusts and to the benefit of advice and counsel, and any expenses in connection with the

administration of the trusts shall be deducted from the income thereof.

ITEM VI. I nominate, constitute and appoint DAVID B. NICHOLSON to be the Personal Representative of this my LAST WILL AND TESTAMENT and direct that he be not required to give bond in any jurisdiction in which my estate may be administered.

I hereby give to my Personal Representative full power and discretion in the management and control of my estate with the right and power to sell, lease or encumber, without application to any court, all or any portion thereof which he may deem necessary or advisable for the payment of my just debts or the advantageous settlement or protection of my estate, and no purchaser, lessee or mortgagee, or anyone dealing with my Personal Representative or with my estate shall be under any obligation to see to

the propriety of the sale, lease,
encumbrance or other transaction, or to
the application of the consideration
involved therein.

In the event of the death of DAVID
B. NICHOLSON or of his renunciation or
incapacity to act as such Personal
Representative, then in any of such
events, I nominate, constitute and
appoint my nephew, MARK ALLEN RICHARDS,
to be the Personal Representative of this
my LAST WILL AND TESTAMENT, likewise
without bond and with the same powers.

IN WITNESS WHEREOF, I have signed my
name and affixed my seal this 5th day of
January, A. D. 1982.

Elizabeth Ann Richards (SEAL)

SIGNED, SEALED, PUBLISHED and
DECLARED by the above named testatrix,
ELIZABETH ANN RICHARDS, as and for her
LAST WILL AND TESTAMENT, in our presence,

and we at her request, and in her presence and in the presence of one another, have subscribed our names as witnesses thereto on the 5th day of January, A. D. 1982, the testatrix having signed her name to each of the four pages hereof.

<u>Names</u>	<u>Addresses</u>
Mary C. Collins	5028 Wisconsin Avenue, N.W. Washington, D.C. 20016
Dorothy M. Owens	5028 Wisconsin Avenue, N.W. Washington, D.C. 20016

PETITION TO COURT OF APPEALS
FOR WRIT(S) OF CERTIORARI

to the

Court of Special Appeals of Maryland
and/or
The Orphans' Court For
Montgomery County, Md.
and/or
The Circuit Court For
Montgomery County, Md.

Julian I. Richards

Appellant

v.

David B. Nicholson and Mark Allen
Richards Former Personal Representatives
of the estate of Elizabeth Ann Richards,
Deceased.

Appellees

Appeal from decision of C.S.A. of Md. in
No. 1086, September Term, 1988.

(Gilbert C.J., Bishop and Garrity)

Appeals from the Orphans' Court for
Montgomery County, Md. closing orders in
Administration No. 008-01-84.

(Messitte and Beard, Judges)

JULIAN I. RICHARDS	:	IN THE
	:	COURT OF
	:	APPEALS
	:	OF MARYLAND
v.	:	
DAVID B. NICHOLSON,	:	Petition
and MARK ALLEN RICHARDS	:	Docket No.
Former Personal	:	126
Representatives of the	:	September
Estate of Elizabeth Ann	:	Term 1989
Richards, Deceased.	:	(No. 1086,
	:	September
	:	Term, 1988
	:	Court of
	:	Special
	:	Appeals)

ORDER

Upon consideration of the motion for reconsideration filed in the above entitled case, it is this 1st day of August, 1990

ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, denied.

/s/ Robert C. Murphy
Chief Judge

JULIAN I. RICHARDS * IN THE
* COURT OF
APPEALS
*
v. OF MARYLAND
* No. 90
*
DAVID B. NICHOLSON, September
Pers. Rep. of the Term, 1986
Estate of Elizabeth
Ann Richards, Deceased *

MANDATE

TO THE HONORABLE JUDGES OF THE
COURT OF SPECIAL APPEALS OF MARYLAND

WHEREAS the case of Julian I.
Richards, v. David B. Nicholson, Pers.
Rep. of the Estate of Elizabeth Ann
Richards, Deceased came before you and
wherein the judgment of the said Court of
Appeals was duly entered on the twenty-
seventh day of June, 1986 as appears from
the transcript of the record of the said
Court of Special Appeals which was
brought into the Court of Appeals of
Maryland by virtue of a writ of
certiorari dated September 8, 1986; and

WHEREAS in the September Term, 1986
the said cause came on to be heard before
the Court of Appeals of Maryland;

ON CONSIDERATION WHEREOF, it was
ordered and adjudged on January 8, 1987
by this Court that a writ of certiorari
having been granted and heard, ORDERED by
the Court of Appeals of Maryland that the
writ of certiorari be, and it is hereby,
dismissed as being improvidently granted.
Costs to be paid by the appellant.
Mandate to issue forthwith.

NOW, THEREFORE, THIS CAUSE IS
REMANDED to you in order that such
proceedings may be had in the cause in
conformity with the judgment of this
Court as accord with right and justice,
and the Constitution and laws of
Maryland, the said writ notwithstanding.

WITNESS The Honorable Robert C.
Murphy, Chief Judge of the Court of

Appeals of Maryland, this eighth day of
January, 1987.

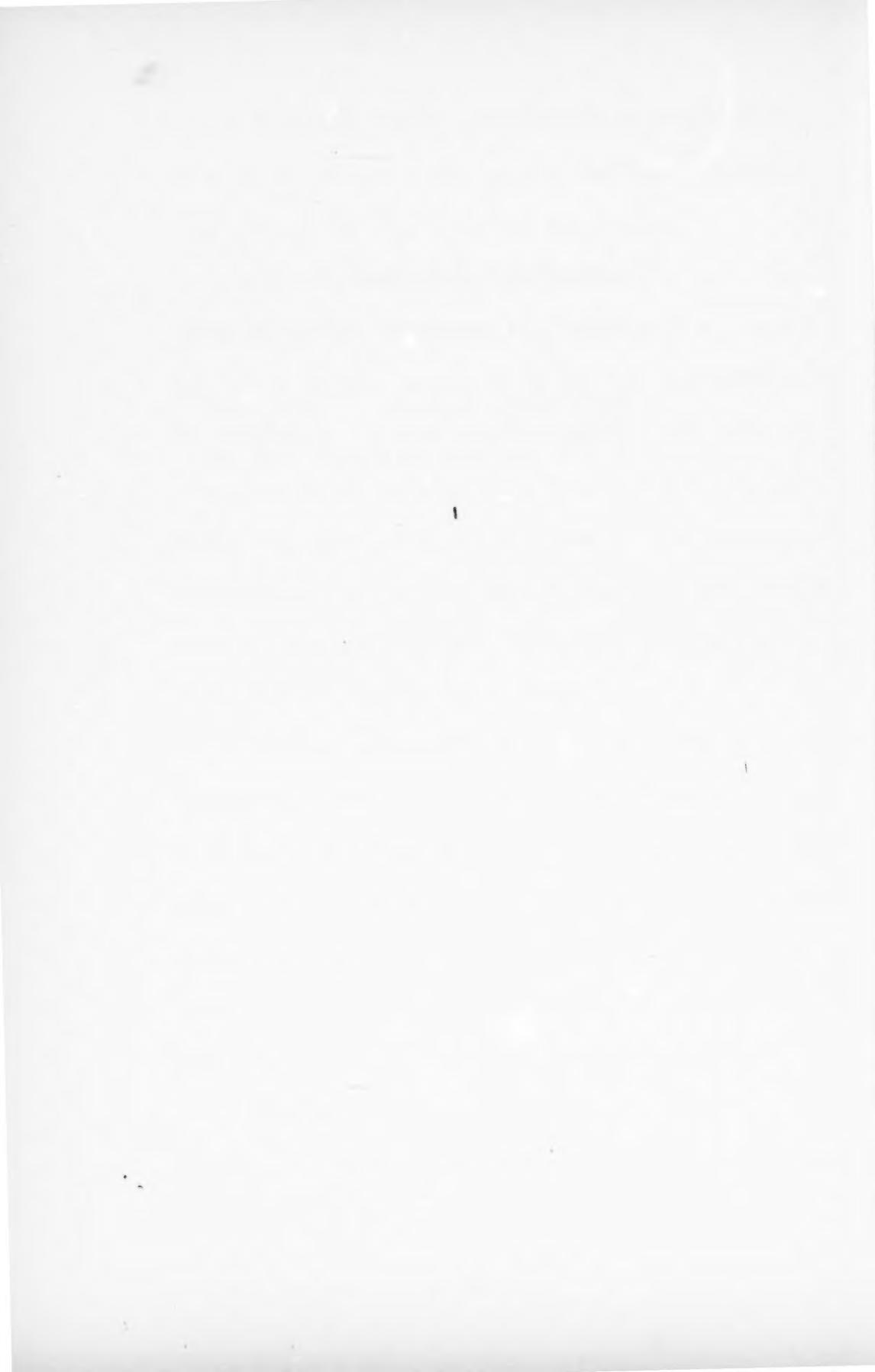
Alexander L. Cummings

Clerk

Court of Appeals of Maryland

Costs:

Appellant brief	\$ 62.40
Appellee brief	163.20
Joint Record Extract	492.00



JULIAN I. RICHARDS : In the
v. : Court of Appeals
of Maryland

DAVID B. NICHOLSON, : Petition
Personal Representative Docket No.
the Estate of : 395
Elizabeth Ann Richards, September
Deceased : Term 1987
: (No. 306,
: September
: Term, 1987
: Court of
: Special
: Appeals)

ORDER

Upon consideration of the petition
for a writ of certiorari to the Court of
Special Appeals in the above entitled
case, it is

ORDERED, by the Court of Appeals of
Maryland, that the petition be, and it is
hereby, denied as there has been no

showing that review by certiorari is
desirable and in the public interest.

/s/ Robert C. Murphy

Chief Judge

Date: December 28, 1987

**Julian I. Richards
109 Bay Colony Drive
P.O. Box 846
Virginia Beach, Virginia 23451**

**(804) 425-0378
Sept. 10, 1987**

To:

**The Circuit Court For Montgomery
&/or The Orphans Court For
Montgomery County**

This is Notice that the undersigned, Julian I. Richards, the caveator in Adm. No. 008-01-84 and in Civil Action No. 3311, pursuant to Maryland Rule 2-325, hereby demands a trial by Jury of the issues raised by his Caveat to the "Will" of his sister, Elizabeth Ann Richards.

/s/ Julian I. Richards



JULIAN I. RICHARDS : IN THE
: : COURT OF APPEALS
: v. : : OF MARYLAND
DAVID B. NICHOLSON, :
Pers. Rep. of the : No. 90
Estate of Elizabeth :
Ann Richards, : September Term,
Deceased : 1986

MOTION FOR RECONSIDERATION OR
FOR A MORE COMPLETE REMAND ORDER

JULIAN I. RICHARDS, by Joseph J. D'Erasmo, his attorney, files this Motion for Reconsideration pursuant to Maryland Rule 850, or in the alternative, for a more complete Remand order pursuant to Maryland Rule 871, and as grounds therefor states:

1. A Petition for a Writ of Certiorari was granted in this cause on the 8th day of September, 1986.

2. Therefore, after the submission of Briefs and oral argument, this Court entered the following Order and a Mandate pursuant to said Order. The Order reads:

"The petition for writ of certiorari in the above entitled case having been ranted and heard, it is this 8th day of January, 1987

"ORDERED, by the Court of Appeals of Maryland, that the writ of certiorari be, and it is hereby, dismissed as being improvidently granted. Costs to be paid by the appellant. Mandate shall issue forthwith."

3. That part of the mandate to which Petitioner would respectfully invite this Court's attention, states:

"ON CONSIDERATION WHEREOF, it was ordered and adjudged on January 8, 1987 by this Court that a writ of certiorari having been granted and heard, ORDERED by the Court of Appeals of Maryland that the writ of certiorari be, and it is hereby, dismissed as being improvidently granted. Costs to be paid by the appellant. Mandate to issue forthwith.

"NOW, THEREFORE, THIS CAUSE IS REMANDED to you in order that such proceedings may be had in the cause in conformity with the judgment of this Court as accord with right and justice, and the Constitution and laws of Maryland, the said writ notwithstanding."

4. Maryland Rule 870 states that except as otherwise provided by Rules 835 and 871, this Court will either affirm or reverse the judgment from which the appeal was taken, or direct the manner in which it shall be modified, changed or amended.

5. This appeal was not dismissed pursuant to Maryland Rule 835 since none of the grounds in Maryland Rule 835.a.1-6 were cited as the basis for dismissal of this appeal. Therefore, Petitioner would urge that this matter was disposed of pursuant to Maryland Rule 871.

6. Maryland Rule 871 states in pertinent part as follows:

". . . Upon remand to the appropriate court, such further proceedings shall be had by amendment of the pleadings, introduction of additional evidence, making of additional parties, or otherwise, as may be necessary for determining the action upon its merits as if no appeal had been taken and the judgment from which the appeal was taken had not been entered; provided, however, the order entered by this Court in remanding said case, and the opinion of this Court on which said order is passed, shall be conclusive as to the points finally decided thereby. In such an order remanding a case, this Court will express the purpose for so remanding and in its opinion filed with said order will determine all questions which may have been properly presented."

7. This Court did not affirm or reverse the judgment of the Court of Special Appeals, nor did it direct the manner in which said Opinion should be modified, changed or amended pursuant to Maryland 870. Instead, this Court ordered a remand pursuant to Maryland Rule 871. In ordering the remand, however, there was nothing stated in the Court's Mandate expressing the purpose for remanding this matter, nor was there an Opinion filed with the mandate determining any question which "may have been properly presented" in the Petition for Writ of Certiorari. In the remanding Mandate, there is of course no direction

as to what, if any, further proceedings are to be had in the appropriate court in connection with this matter.

8. As a result, this Honorable Court has appeared to have neither affirmed, reversed or modified the decision of the Court of Special Appeals nor has it issued a complete Remand Order pursuant to Maryland Rule 871a.

9. In this regard, it is respectfully submitted that neither in the Court of Special Appeals nor in this Honorable Court did the majority express an opinion on the primary thrust of the Appellant's (Petitioner's) argument that he was effectively denied due process of law when the trial judge simply ignored the provisions of Maryland Rule 2-132, as detailed by Judge Bishop in his Dissenting Opinion in the Court of Special Appeals.

10. In Lee v. State, 56 Md. App. 613 (1983), the Court of Special Appeals held that a defendant (incidentally the defendant was a lawyer) in a civil contempt proceeding had the constitutional right to have the assistance of counsel to make a closing argument before being subject to a verdict requiring him to pay arrearages of child support or, in the alternative, to a period of incarceration. The right to the effective assistance of counsel arises from Article 24 of the Maryland Declaration of Rights, and the Fourteenth Amendment to the United States Constitution. In so doing, the Court noted the recognition by appellate courts in other states of the constitution right to assistance of counsel to present closing arguments in

civil proceedings. Fuhrman v. Fuhrman,
254 N.W.2d 97 (N.D. 1977); Aladdin Oil
Burner Corp. v. Morton, 117 N.J.L. 260,
187 A. 350 (1936).

11. In the instant case, despite the obvious purpose of Maryland Rule 2-132 to assure the right to the assistance of counsel, the Petitioner was not just deprived of the right to the assistance of counsel in making a final argument in a civil case, he was deprived of the right to have counsel, in blatant violation of Maryland 2-132 in a proceeding (viz. a motion for summary judgment) to dispose of the whole case and in a proceeding in which monetary sanctions against him had been demanded. (It should be noted that Maryland Rule 1-341, used as the basis for the imposition of sanctions against Petitioner, is not applicable to proceedings in the Orphans' Court. See Maryland Rule 1-101. Query as to whether Judge Mitchell was sitting as an Orphans' Court judge when he imposed sanctions on Mr. Richards, in which case he exceeded his jurisdiction.)

12. Although this is a civil, not a criminal proceeding, the Appellees' attorneys were not only seeking a summary judgment against the Petitioner, they were also seeking attorney's fees and costs (sanctions) in the nature of a fine against the Appellant (Petitioner) Richards, which placed his property in jeopardy. Even assuming, arguendo, the assistance of counsel was not constitutionally mandated on the motion for summary judgment, the Petitioner contends that he is entitled to such assistance when the Court is asked to deprive him of a part of his property. The right to

assistance of counsel has been recognized in paternity suits, even at State expense. See 4 A.L.R. 4th 363, Right of Indigent Defendant in Paternity Suit to Have Assistance of Counsel at State Expense, Section 3, and in Administrative hearings when a hearing is required, and where property rights are involved. Brown v. Air Pollution Control Board, 37 Ill. 2d 450, 227 N.E.2d 754 (1967); 33 A.L.R. 3d 229, "Right to Assistance by Counsel in Administrative Proceedings".

13. The right to the assistance of counsel in a civil proceeding has also been recognized before tenants in public housing may be evicted, Caulder v. Durham Housing Authority, 433 F.2d 998 (4th Cir. 1970); Williams v. White Plains Housing Authority, 35 App. Div. 2d 965, 317 N.Y.S.2d 935 (1970); Green v. Copperstone Ltd., 28 Md. App. 498, 511 (1975), and where property rights of public assistance recipients were going to be adjudicated. Rivera v. Blum, 420 N.Y.S.2d 304 (1978).

14. In the case before the trial court, the Defendant (Appellee and Respondent here) sought the imposition of sanctions against the Appellant Richards in the form of attorney's fees in the amount of \$11,053.55. It is respectfully submitted that due process of law, as implemented by Maryland Rule 2-132, required a continuance in the trial court in order that Mr. Richards obtain the assistance of counsel before such sanctions could be imposed upon him, because his property rights were to be adjudicated by the court, even assuming his underlying cause of action lacked sufficient evidentiary justification.

For the above reasons, the Petitioner would urge that this Honorable Court reconsider its actions in dismissing the Petition for Writ of Certiorari, enter an Order reversing the Court of Special Appeals, or enter an Order remanding this matter to the Court of Special Appeals for the purpose of reconsidering the issue of Petitioner's right to the assistance of counsel under Maryland Rule 2-132 on the issue of the sanctions sought against him.

Respectfully submitted,

/s/ Joseph J. D'Erasmo
JOSEPH J. D'ERASMO
Attorney for Petitioner



IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

IN THE MATTER OF) Civil Action No.
THE ESTATE OF) 3311 Admin. No.
ELIZABETH ANN) 008-01-84
RICHARDS, DECEASED)

ORDER

The Caveatee's Motion for Summary
Judgement and Motion for Sanctions having
been read and considered and the matter
having been heard in open Court, it is by
the Circuit Court for Montgomery County,
Maryland, this 10th day of September,
1985,

ORDERED, that the Caveattee's Motion
for Summary Judgment be and the same is
hereby granted, and the Clerk is directed
to certify to the Orphan's Court, in
answer to he issues presented, findings
by this Court that the answer to each of
the issues one through five inclusive is
"Yes", and that the answer to issues six
and seven is "No"; and it is further,

ORDERED, that the Caveatee's Motion for Sanctions be and the same is hereby granted, the Court having found that Julian I. Richards, Caveator herein, has instituted and maintained this proceeding without substantial justification, and in connection, therewith, it is further,

ORDERED, that judgment be entered in favor of David B. Nicholson, Personal Representative of the Estate of Elizabeth Ann Richards, against Julian I. Richards, in the amount of \$11,053.55, which the Court finds to be reasonable expenses incurred by the Caveatee in opposing and defending this proceeding thus far.

/s/John J. Mitchell

Honorable John J. Mitchell
Circuit Court for Montgomery
County, Maryland

Julian I. Richards * IN THE
v. * COURT OF APPEALS
* OF MARYLAND

DAVID B. NICHOLSON, *
Pers. Rep. of the * No. 90
Estate of Elizabeth *
Ann Richards, * September Term,
Deceased * 1986

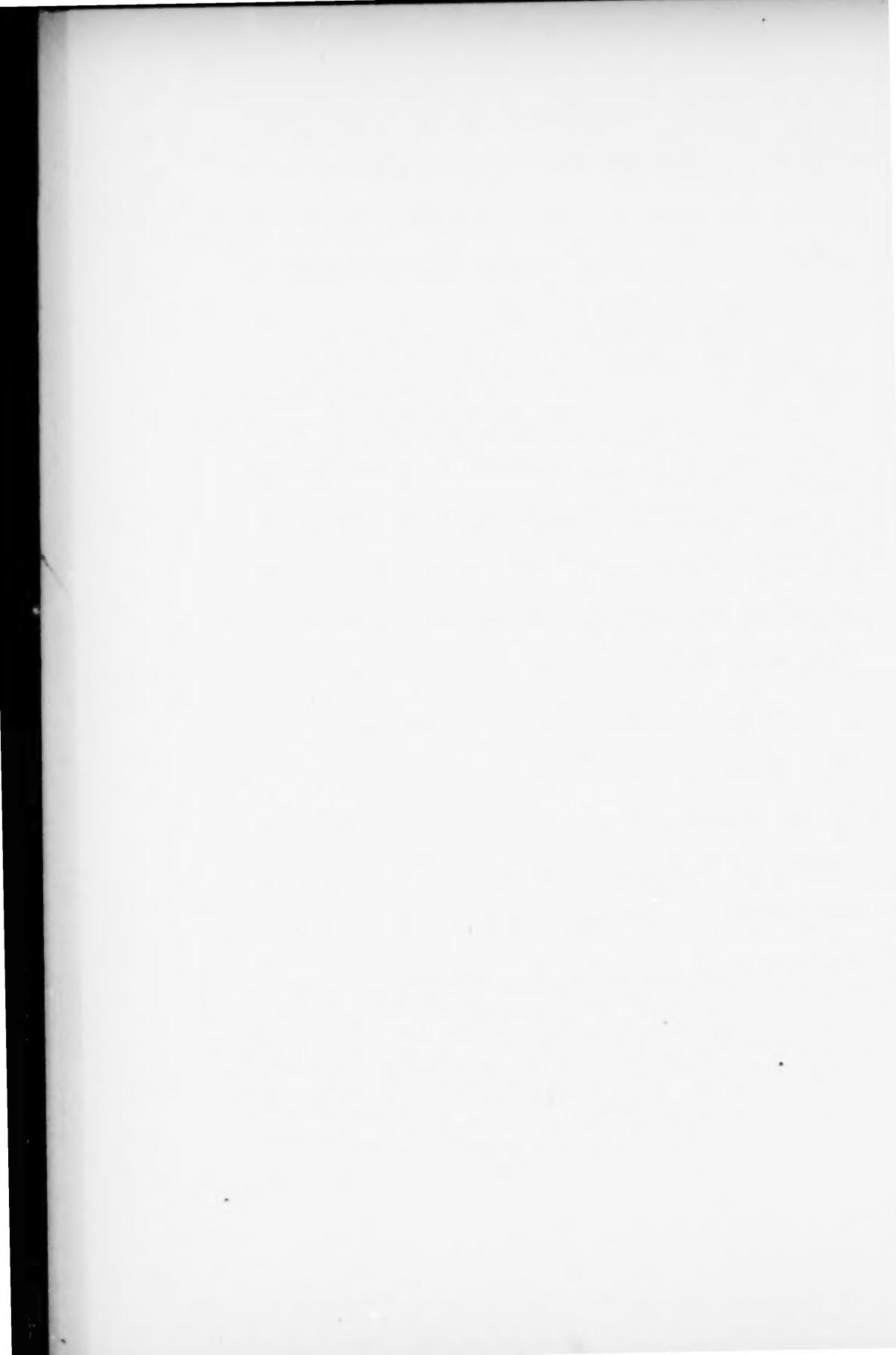
* * * * *

ORDER

The petition for writ of certiorari
in the above entitled case having been
granted and heard, it is this 8th day of
January, 1987.

ORDERED, by the Court of Appeals of
Maryland, the writ of certiorari be, and
it is hereby, dismissed as being improvi-
dently granted. Costs to be paid by
appellant. Mandate shall issue forth-
with.

/s/ Robert C. Murphy
Chief Judge



JULIAN I. RICHARDS	:	In the
	:	Court of
	:	Appeals
	:	of Maryland
v.	:	
David B. Nicholson and	:	Petition
Mark Allen Richards	:	Docket No.
Former Personal	:	126
Representatives of	:	September
Elizabeth Ann Richards,	:	Term 1989
Deceased.	:	(No. 1086,
	:	September
	:	Term, 1988
	:	Court of
	:	Special
	:	Appeals)

ORDER

Upon consideration of the petition
for a writ of certiorari to the Court of
Special Appeals in the above entitled
case, it is

ORDERED, by the Court of Appeals of
Maryland, that the petition be, and it is
hereby, denied as there has been no
showing that review by certiorari is
desirable and in the public interest.

/s/ Robert C. Murphy

Chief Judge

Date: December 28, 1987



VIRGINIA: IN THE CLERK'S OFFICE OF THE
CIRCUIT COURT OF THE CITY OF VIRGINIA
BEACH, VIRGINIA

NOTICE OF FILING OF FOREIGN JUDGMENT

TO JUDGMENT DEBTOR: TAKE NOTICE that pursuant to the provisions of Section 8.01-465.1 et seq. of the Code of Virginia that a foreign judgment, a copy of which is attached, has been filed in this office.

Docketed in JLDB: 63 at page number 380

Judgment Debtors

Name and Address: Julian I. Richards
109 Bay Colony Drive
VaBeach, Va 23451

Judgment Creditors

Name and Address: Mark Allen Richards
8403 Saint Regis Way
Montgomery Village,
Maryland 20879

Judgment Creditors

Lawyer, if any: Bernadetta A.
Fritschie, Fox &
Proffit, P.C.
#352-1655
Fairfax, VA 22030

J. CURTIS FRUIT, CLERK

DATE: October 5, 1988 By: _____
/s/Deputy Clerk



SHERMAN, MEEHAN & CURTIN, P.C.

August 4, 1988

The Honorable John J. Mitchell
Judge, Circuit Court for Montgomery
County
Judicial Center, Room 312
50 Courthouse Square
Rockville, Maryland 20850

Re: Estate of Elizabeth Ann
Richards, deceased-
Admin. No. 008-01-84

Dear Judge Mitchell:

In accordance with the conference we held in your chambers on Monday afternoon at which Jim Cromwell, David Nicholson and I were in attendance, I am enclosing a Petition for Authority for David Nicholson to resign and to disburse and distribute estate funds. I am also enclosing an order consented to by Jim Cromwell and our client Mark Richards. Jim specifically asked that I affix his signature to the order.

Once this order is signed, Mr. Richards will qualify as Personal Representative by filing a nominal bond and Notice of Registered Agent.

On behalf of Mr. Richards as well as David Nicholson, Jim Cromwell and our office, I want to thank you for taking

the time to see us and providing judicial support to hopefully end this protracted and litigation laden estate.

Very truly yours,

Michael F. Curtin

MFC/lam

Enclosures

cc: James J. Cromwell, Esq.
David B. Nicholson, Esq.
Mark A. Richards

